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2                   **IN THE UNITED STATES DISTRICT COURT FOR THE**  
3                   **WESTERN DISTRICT OF MISSOURI**  
                  **SOUTHERN DIVISION**

4 **UNITED STATES OF AMERICA,**            ) **Case No. 16-03077-01-CR-S-BCW**  
  )  
5                   **Plaintiff,**                ) **Springfield, Missouri**  
  ) **January 9, 2017**  
6 **v.**    )  
  )  
7 **LAURA BROWN,**                                )  
  )  
8                   **Defendant.**                )  
  )  
\_\_\_\_\_)

9  
10                   **TRANSCRIPT OF HEARING ON CHANGE OF PLEA**  
11                   **BEFORE THE HONORABLE DAVID P. RUSH**  
                  **UNITED STATES MAGISTRATE JUDGE**

12 **APPEARANCES:**

13 For the Plaintiff:                   Ms. Josephine M. Larison  
  Assistant United States Attorney  
14    901 St. Louis St., Ste. 500  
  Springfield, MO 65806  
  (417) 831-4406

15 For the Defendant:                   Mr. James R. Hayes  
16    214 W. Phelps St., Ste. 102  
  Springfield, MO 65806  
17    (417) 720-1000

18 Court Audio Operator:               Mr. C. Steve Burch

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24  
25 Proceedings recorded by electronic sound recording, transcript  
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1 (Court in Session at 10:38 a.m.)

2 THE COURT: Calling in *United States vs. Laura Brown*.

3 The defendant appears in person along with her attorney, Mr. Jim  
4 Hayes. And the United States appears by Assistant United States  
5 Attorney, Ms. Jody Larison -- or Special Assistant United States  
6 Attorney. This matter is set this morning for a change of plea  
7 to Count One of the Superseding Indictment that was returned  
8 against this defendant on November 1<sup>st</sup> -- (clearing throat)  
9 excuse me -- 2016, pursuant to a written Plea Agreement. Ms.  
10 Brown, you have signed a consent to have these proceedings for a  
11 plea of guilty before a Magistrate Judge, with the understanding  
12 that a United States District Judge, a judge of higher  
13 jurisdiction, will keep your case for acceptance of the plea of  
14 guilty and sentencing. Even though you signed this consent you  
15 have a right, if you wish, to appear before a United States  
16 District Judge, a judge of higher jurisdiction, for these  
17 proceedings. At any appearance before the District Judge, you're  
18 presumed innocent until such time, if ever, as the United States  
19 establishes your guilt beyond a reasonable doubt to the  
20 satisfaction of the judge or jury. You always have a right to  
21 confront and cross-examine witnesses. You have a right to use  
22 the power of the court to subpoena evidence on your behalf and  
23 you have a right to testify or not testify as you would choose.  
24 And if you chose not to testify, that would not be held against  
25 you as that is your right. If, after understanding the charges

1 against you, the range of punishment, if convicted, and your  
2 right to appear before a District Judge, if you wish, you may  
3 waive or give up that right and proceed this morning before the  
4 Magistrate Judge. As I indicated, that you and your attorney and  
5 the attorney for the United States have signed such a consent.  
6 Do you understand that you have a right to appear before a United  
7 States District Judge, a judge of higher jurisdiction, for these  
8 proceedings?

9 MS. BROWN: Yes.

10 THE COURT: And is it your desire to give up that right  
11 and proceed this morning before the Magistrate Judge?

12 MS. BROWN: Yes.

13 THE COURT: Ms. Brown, do you understand the charge  
14 against you in Count One of the Superseding Indictment in this  
15 case?

16 MS. BROWN: Yes.

17 THE COURT: Do you understand that if convicted of the  
18 charge in Count One, that the minimum penalty the court may  
19 impose is not less than five years imprisonment, while the  
20 maximum penalty the court may impose is not more than 40  
21 imprisonment, a \$5 million fine, not less than four years  
22 supervised release, and a \$100 mandatory special assessment?

23 MS. BROWN: Yes.

24 THE COURT: And you'll have to speak up, please.

25 MS. BROWN: Yes.

1           THE COURT: To the charge in Count One of the  
2 Superseding Indictment, how do you wish to plead, guilty or not  
3 guilty?

4                   (Off Record Attorney-Client Discussion)

5           MS. BROWN: Guilty.

6                   (Off Record Attorney-Client Discussion)

7           MR. HAYES: Your Honor, I apologize. If I could have a  
8 moment?

9           THE COURT: Certainly, we'll go off the record.

10                   (Off Record Attorney-Client Discussion)

11           THE COURT: And, Ms. Brown, I had just finished asking  
12 you some questions about whether you understood the range of  
13 punishment in this case. And I think the reason we went off the  
14 record was just because there's a little bit of either hesitation  
15 or confusion and I know your attorney asked to go off the record  
16 to discuss with you. But the question I have for you is to the  
17 charge in Count One of the Superseding Indictment, how do you  
18 wish to plead, guilty or not guilty?

19           MS. BROWN: Guilty.

20           THE COURT: Would you please raise your right hand?

21                   LAURA BROWN, DEFENDANT, SWORN

22           THE COURT: Has anyone made any threat of any kind to  
23 force you to plead guilty or to give up any of the other rights  
24 we've discussed this morning?

25           MS. BROWN: No.

1 THE COURT: Now, you have signed a Plea Agreement and is  
2 there a supplement to that agreement also that she's signed?

3 MS. LARISON: Yes, Your Honor.

4 THE COURT: All right. Ms. Brown, you've signed both  
5 the Plea Agreement and a supplement to that agreement. Have you  
6 read both of those agreements and gone over them with your  
7 attorney?

8 MS. BROWN: Yes.

9 THE COURT: Do you understand what's contained in both  
10 the Plea Agreement and the supplement to the Plea Agreement?

11 MS. BROWN: Yes.

12 THE COURT: Other than what is contained in those two  
13 agreements, has anyone made any promise of any kind to force you  
14 or to induce you or overcome your will to get you to plead guilty  
15 or give up any of the other rights we've discussed?

16 MS. BROWN: No.

17 THE COURT: Now, I mentioned to you that there was a  
18 supervised release term of not less than four years that could be  
19 imposed in your case. Do you understand that if that term were  
20 imposed and then revoked for any reason, that you could be  
21 required to serve an additional term of imprisonment of not more  
22 than three years, and if that happened, you would receive no  
23 credit for any other time you had spent either in custody or on  
24 release?

25 MS. BROWN: Yes.

1 THE COURT: Do you understand that the Court could then  
2 impose an additional term of supervised release, which is  
3 governed by the maximum of the statute, minus any time you'd  
4 spent in custody as a result of a violation?

5 MS. BROWN: Yes.

6 THE COURT: Do you understand that from a sentence  
7 imposed in your case that there is no parole?

8 MS. BROWN: Yes.

9 THE COURT: Do you understand that there are Sentencing  
10 Guidelines to which the District Court would refer to in an  
11 advisory capacity when attempting to fashion a reasonable  
12 sentence in your case?

13 MS. BROWN: Yes.

14 THE COURT: There are guideline calculations in your  
15 Plea Agreement. Have you discussed the guidelines with your  
16 attorney?

17 MS. BROWN: Yes.

18 THE COURT: And do you understand them?

19 MS. BROWN: Yes.

20 THE COURT: Do you understand that the final decision as  
21 to how the guidelines are calculated and ultimately what sentence  
22 will be imposed rests with the District Judge?

23 MS. BROWN: Yes.

24 THE COURT: If the District Judge would calculate the  
25 guidelines differently from what is in the Plea Agreement, from

1 what you've discussed with your attorney, that fact would not  
2 give you the right to withdraw or change your plea of guilty. Do  
3 you understand that?

4 MS. BROWN: Yes.

5 THE COURT: Once the District Judge establishes the  
6 advisory guideline range, in some circumstances, you could be  
7 sentenced above that range and, in other circumstances, below  
8 that range. And again, the judge's decision, if you disagreed,  
9 would not give you the right to withdraw your plea of guilty. Do  
10 you understand that?

11 MS. BROWN: Yes, sir.

12 THE COURT: Now, Ms. Brown, you have a right to a trial  
13 by jury with all the protections that I explained to you at the  
14 beginning of these proceedings. Do you understand your right to  
15 a trial by jury?

16 MS. BROWN: Yes.

17 THE COURT: And do you understand that if the court  
18 accepts your plea of guilty that there won't be a trial?

19 MS. BROWN: Yes.

20 THE COURT: Now, I'm going to ask you about the offense  
21 charged in Count One the Superseding Indictment in this case. I  
22 would remind you that you are under oath. You must answer  
23 truthfully. Any false answers could result in charges of false  
24 swearing or perjury. You always have the right to remain silent.  
25 And I want to refer you to your Plea Bargain Agreement,

1 specifically on page 2, Paragraph 3 or Section 3, which is  
2 entitled in bold **Factual Basis for Guilty Plea**. That then  
3 continues throughout the remainder of page 2, Paragraph 3 or  
4 Section 3. Have you read Paragraph 3 and gone over it with your  
5 attorney?

6 MS. BROWN: Yes.

7 THE COURT: And are the statements contained in Section  
8 3 true?

9 MS. BROWN: Yes.

10 THE COURT: Mr. Hayes, you've had access to the  
11 Government's discovery file in this case, have you not?

12 MR. HAYES: I have, Your Honor.

13 THE COURT: And based upon your review of the discovery  
14 file, are you satisfied if put to proof, that the United States  
15 could make a submissible case as to all the elements pertaining  
16 to Count One of the Superseding Indictment as set out in Section  
17 3 of the Plea Agreement?

18 MR. HAYES: Yes, Your Honor.

19 THE COURT: There is an adequate factual basis for the  
20 plea of guilty to Count One of the Superseding Indictment. I  
21 find that the plea is voluntary and did not result from force,  
22 threats or promises other than those set forth in the Plea  
23 Agreement and the supplement to that agreement. Ms. Brown, you  
24 are represented in this case by Mr. Hayes. Have you had enough  
25 time to talk with him about your case?



1 MS. BROWN: Yes.

2 THE COURT: And are you satisfied with the advice that  
3 he's given you?

4 MS. BROWN: Yes.

5 THE COURT: The law requires me to ask you if this  
6 morning you are on any medication prescribed by a physician or  
7 any drugs or alcohol of any kind which would affect your ability  
8 to understand these proceedings?

9 MS. BROWN: No.

10 THE COURT: The Plea Bargain Agreement that you've  
11 signed contains what we refer to as an appeal waiver. And I'd  
12 like to direct your attention to Paragraph 15 or Section 15 that  
13 begins -- or it's on page 9 of your Plea Bargain Agreement.  
14 Section 15 or Paragraph 15 is entitled in bold **Waiver of**  
15 **Appellate and Post-Conviction Rights**. Have you read Paragraph 15  
16 and gone over it with your attorney?

17 MS. BROWN: Yes.

18 THE COURT: And do you understand that by signing this  
19 Plea Agreement that you've given up those rights to appeal as set  
20 forth in Paragraph 15?

21 MS. BROWN: Yes.

22 THE COURT: Understanding that and the other matters  
23 that we've discussed this morning, is it your desire for the  
24 Court to accept the plea of guilty?

25 MS. BROWN: Yes.

1 THE COURT: Ms. Larison, on behalf of the United States,  
2 do you have any other record under Rule 11 that you think I need  
3 to make?

4 MS. LARISON: No, Your Honor.

5 THE COURT: Mr. Hayes, on behalf of the defendant, do  
6 you have any other record under Rule 11 that you think I need to  
7 make?

8 MR. HAYES: No, Your Honor.

9 THE COURT: I will recommend the plea of guilty be  
10 accepted and I will order a Presentence Investigation to be  
11 conducted by the Probation Office. Now, the Court has been made  
12 aware that -- and Ms. Larison, you may be able to address this --  
13 but pursuant to the Plea Agreement, it is my understanding that  
14 the defendant is agreeing to go into custody at this time.

15 MS. LARISON: That is correct, Your Honor.

16 THE COURT: And I will state for the record, Ms. Brown,  
17 I am in receipt of a report from Pretrial Services and I just  
18 want the record to be clear on this. Although I note that there  
19 were some violations of your bond that were noted in this report,  
20 the recommendation from Pretrial Services was that you would  
21 continue with your outpatient substance abuse treatment and sweat  
22 patch testing. And the only reason I say that is that I want the  
23 record to be clear that I am not revoking your bond for any  
24 violations or misconduct. The Pretrial Services Officer  
25 recommended that you be continued but that pursuant to your Plea

1 Agreement, you are agreeing to go into custody at this time. And  
2 I think that because the record should reflect that, that should  
3 prevent you from when you're classified by the Bureau of Prisons,  
4 it won't reflect that you had your bond revoked for misconduct.  
5 And so the record should so reflect. Is there anything further  
6 from either side?

7 MS. LARISON: No, Your Honor.

8 MR. HAYES: No, Your Honor.

9 THE COURT: Ms. Brown, good luck to you. With that,  
10 we'll be in recess. And the defendant will be remanded to the  
11 custody of the marshals. Thank you.

12 (Court Adjourned at 10:50 a.m.)  
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5 I certify that the foregoing is a correct transcript  
6 from the electronic sound recording of the proceeding in the  
7 above-entitled matter.

8 /s/ Lissa C. Whittaker  
9 Signature of transcriber

January 13, 2017  
Date